

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RAYMOND AND BETTY KARLINSKY	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1980.	:	

Petitioners, Raymond and Betty Karlinsky, c/o Gerald Stahl, Esq., 175 Fifth Avenue, New York, New York 10010, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1980 (File No. 802803).

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on June 23, 1988 at 10:45 A.M. Petitioners appeared by Gerald Stahl, Esq. The Audit Division appeared by William F. Collins, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioner Raymond Karlinsky was entitled to allocate consultation fee income received in 1980 without New York State for unincorporated business tax purposes.

FINDINGS OF FACT

1. Petitioner Raymond Karlinsky was an insurance executive during the year 1980, earning his living from two sources. The first source was Karnew Intermediary, Inc., from which Mr. Karlinsky drew a salary as an employee. Karnew was a service company which managed all of the accounting, bookkeeping, claims and business performed through wholesalers and brokers for a company called Promatora De Occidente Panama, S.A. (hereinafter "POSA"). Mr. Karlinsky's second source of income during 1980 was earned as an insurance consultant for POSA. In his capacity as an insurance consultant, Mr. Karlinsky was an independent contractor who managed POSA's foreign business from London and Mexico City.

POSA held contracts to underwrite insurance for a group of 80 insurance companies, most of which were third-world companies, and POSA's job was to secure and disseminate a portion of the world's reinsurance business among these 80 different companies.

POSA engaged Mr. Karlinsky's services for its European business. Mr. Karlinsky opened an office at POSA's behest and staffed it with technical people, including an accountant. He hired corporate counsel for the purpose of approving and working with contracts. A substantial portion of his work included creating contracts between various insurance companies from all parts of the world. He also attended all policy meetings and dealt with all problems that arose on a daily basis. Although it was alleged that Mr. Karlinsky had his own stationery, telephone listing and banking affiliations, no records or proof thereof were produced.

2. Petitioners, Raymond E. and Betty S. Karlinsky, timely filed a 1980 New York State Income Tax Resident Return, with a properly validated extension of time to file, to which was attached a Supplemental Income Schedule, Federal Schedule E (Form 1040), indicating a net loss of \$169,480.00. Attached to the Schedule E was a handwritten schedule which indicated that petitioner Raymond Karlinsky received \$357,000.00 in consultation fees during the year 1980. As explained in Finding of Fact "1" above, these fees were received by petitioner Raymond Karlinsky from POSA in his capacity as an insurance consultant.

3. Upon inspection of the Federal Schedule E attached to Form 1040, the Audit Division determined that the consulting fees received by petitioner Raymond Karlinsky in 1980 were subject to unincorporated business tax. Subsequently, on March 9, 1984, the Audit Division issued to Raymond Karlinsky a Statement of Unincorporated Business Tax Audit Changes which set forth the following explanation:

"The consulting fees received are subject to unincorporated business tax, as an independent consultant.

* * *

Corrected Taxable Income	
347,000	
Tax @ 4%	13,880
Corrected Unincorporated Business Tax Due	13,880
Unincorporated Business Tax Previously Computed	
NONE	
Total Additional Tax Due	13,880
Penalties: 685(a)(1)	3,123
685(a)(2)	2,429
685(b)	694
Interest	4,783
Total	
24,909"	

4. On April 6, 1984, the Audit Division issued to Raymond E. Karlinsky a Notice of Deficiency for the year 1980 in the sum of \$13,880.00, penalty of \$6,315.40 and interest of \$4,973.30, for a total amount due of \$25,168.70 for the year 1980.

5. Although petitioner Raymond Karlinsky allegedly created and managed offices in Mexico City and London between 1979 and 1981 for the benefit of POSA, he was unable to provide any records kept in the course of his business operations during the year 1980, or substantiate his claim that income received from POSA was received by him outside of the State of New York. Mr. Karlinsky produced statements of two solicitors with whom he had dealings in Great Britain, but neither gentleman attested to the internal business operations of Mr. Karlinsky or whether Mr. Karlinsky's unincorporated business operations were wholly or partly carried on within the State of New York.

6. Mr. Karlinsky admitted that he never maintained any personal records of his own with regard to his business in the form of diaries, expense accounts, airline tickets, bank statements or other corroborating evidence of the fact that he was engaged in business out of the country during the year 1980.

SUMMARY OF PETITIONERS' POSITION

7. Petitioner Raymond Karlinsky contends that he did not file an unincorporated business tax return because the monies that the State of New York claimed were subject to unincorporated business tax were earned in European countries and in Mexico from offices operated in those countries. He also contends that none of the monies were earned from an office within the State of New York or the United States.

CONCLUSIONS OF LAW

A. Tax Law former § 701 provided, in part, as follows:

"Imposition of tax. -- (a) General. -- A tax is hereby imposed for each taxable year on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within this state."

B. Tax Law former § 703(a) defined an unincorporated business as:

"any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership or fiduciary or a corporation in liquidation...."

Given this definition, it is clear that Mr. Karlinsky's business was an unincorporated business subject to the tax imposed pursuant to Tax Law former § 701.

C. In general, an unincorporated business is carried on at any place, either within or without New York State, where the unincorporated business entity has a regular place of business (see 20 NYCRR former 207.2[a]; Matter of Leeam Weathers-Lowin and Jean Weathers-Lowin, State Tax Commission, October 20, 1986).

D. Petitioners have failed to sustain their burden of proof established by Tax Law § 689(e) (incorporated into Article 23 by § 722) which requires them to show that the unincorporated business was carried on either completely or partially without New York State, thus entitling them to allocate their income within and without New York State (Tax Law former § 707[a]). Raymond Karlinsky failed to produce any documentation or credible corroborating evidence of his allegations that he worked exclusively out of the country while earning the consulting fees he declared on his federal Schedule E. Therefore, all of the income derived from the above-stated activities is deemed to be New York source income (Herschel Krasnow and Sylvia Krasnow, New York State Tax Commission, November 16, 1979).

E. The petition of Raymond and Betty Karlinsky is denied and the Notice of Deficiency dated April 6, 1984 is hereby sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

September 1, 1988

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/s/ Joseph W. Pinto,

Jr. _____ ADMINISTRATIVE LAW JUDGE